

REMARKS

This Amendment responds to the Office Action mailed August 25, 2009. With this Amendment, Applicants amend claims 8 and 11, and cancel claims 9 and 10. Applicants note that the Office has deemed claims 1-7 and 14-22 as being directed to non-elected subject matter and therefore withdrawn these claims from consideration. No new matter has been added with the present Amendment. Support for the Amendment can be found throughout the specification and claims as filed, including, e.g., in original claims 8 and 11, and at pages 11-12 of the specification. Claims 8, 11, 12, and 13 are under consideration with this Amendment.

Objection to the Disclosure

The Office Action objects to the disclosure for not citing the continuation data for the instant application.

In response, and without acquiescing to the propriety of the objection, Applicants submit that the instant Amendment is responsive to the present objection to the disclosure.

Claim Objection

The Office Action objects to claim 8 for recitation of "An isolated DNA a having any of the following nucleotide sequences:".

In response, Applicants submit that the instant Amendment is responsive to the present objection.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

The Action rejects claims 8-13 under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. In particular, the Action states that “the specification discloses a fluorescent protein from *favia favius* such as SEQ ID NO:1, its specific variants such as SEQ ID NO:12, 14, 16, 18 and 20 having mutations at specific positions, and the nucleotide sequences such as SEQ ID NO:2, 13, 15, 17, 19, and 21 that encoding [sic] the fluorescent proteins” (page 5, first full paragraph). However, the Action alleges that the specification “does not disclose a genus of variants for polynucleotides having a deletion, substitution and/or addition of 1 to 60 nucleotides in the SEQ ID NO:2, 13, 15, 17, 19 or 21 and encoding a fluorescent protein, or polynucleotide fragments of SEQ ID NO:2, 13, 15, 17, 19, or 21.” *Id.* The rejection further alleges that the specification does not provide sufficient guidance as to what structural differences are permissible in the nucleic acid variant that would still produce a functional protein. *Id.*

In response, Applicants submit that the claimed subject matter is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In particular, Applicants submit that the specification provides the complete sequence structure for a nucleic acid which encodes a novel fluorescent protein from *favia favius* (specification at page 2, lines 7-17 and SEQ ID NOs: 1-2). Applicants further submit that the specification discloses the complete nucleic acid and amino acid sequence structures for five variants thereof, which variants are also fluorescent proteins (SEQ ID NOs: 12-13, 14-15, 16-17, 18-19, and 20-21). Applicants further submit that the variants for which complete sequence data has been provided comprise 1 - 9 amino acid deletions, substitutions, and/or additions. Applicants also submit that

the specification describes mutations which may be made at the following twenty positions with respect to SEQ ID NO: 1: 10, 12, 40, 54, 60, 62, 63, 69, 70, 87, 93, 109, 119, 121, 140, 144, 160, 196, 197, 198.

With regard to the guidance provided by the specification, Applicants submit that Figure 3 shows an alignment of amino acid sequences in proteins encompassed by the claimed subject matter in addition to DsRED and Kaede. Applicants also submit that that the specification describes the chromophore shown in an asterisk portion of Figure 3, wherein X may represent any amino acid, Y generally represents tyrosine and optionally an aromatic amino acid such as phenylalanine, tryptophan or histidine, and G represents glycine (see paragraph bridging pages 27-28). Applicants also submit that page 29 of the specification discloses that the shaded portion of Figure 3 highlights residues considered to significantly affect fluorescent properties. Thus, Applicants submit that the specification does provide sufficient guidance as to what structural differences are permissible in the nucleic acid variant that would still produce a functional protein.

To further illustrate the sequence aspects of the claimed subject matter, and in further clarification of the structure/function relationship present in the genus of nucleic acids encompassed by the claims, Applicants further submit herewith Attachments A, B, and C for the Examiner's consideration.

Based at least on the foregoing, Applicants respectfully submit that the specification describes the claimed subject matter in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under the written description requirement of 35 U.S.C. §112, first paragraph.

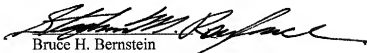
CONCLUSION

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections of record, and allow all the pending claims.

No additional fee is believed due at this time. If, however, any additional fee is necessary to ensure consideration of the submitted materials, the Patent and Trademark Office is hereby authorized to charge the same to Deposit Account No. 19-0089.

Should there be any questions, the Examiner is invited to contact the undersigned at the below listed telephone number.

Respectfully Submitted,
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	10	20	30	40	50	
KKO[Frame 1]	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
H41pkve#1[Fr	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
mKikGR1.txt[	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
mkikgr69.txt	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
mkikgr10.1[F	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
mkikgr12.0 D	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
mkik132.txt[	1	NSVITSEMKI	ELRMEGAVNG	HKFVITGKGS	GQPFEGIQNV	DLTVIEGGPI 50
	60	70	80	90	100	
KKO[Frame 1]	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
H41pkve#1[Fr	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
mKikGR1.txt[	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
mkikgr69.txt	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
mkikgr10.1[F	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
mkikgr12.0 D	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
mkik132.txt[	51	PFADFILITV	FHYGNRVFVE	YP2EINDYFR	QSFPEGYSWE	RSMVSYEDGGI 100
	110	120	130	140	150	
KKO[Frame 1]	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
H41pkve#1[Fr	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
mKikGR1.txt[	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
mkikgr69.txt	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
mkikgr10.1[F	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
mkikgr12.0 D	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
mkik132.txt[	101	CLATNNITNK	KDGSNCFVNE	IRFDGTFNFA	NGPVMQRKTV	KWEPSTEKMY 150
	160	170	180	190	200	
KKO[Frame 1]	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
H41pkve#1[Fr	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
mKikGR1.txt[	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
mkikgr69.txt	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
mkikgr10.1[F	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
mkikgr12.0 D	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
mkik132.txt[	151	VRDGVLKGDV	EMALLLOGGG	HYRCDFRITV	KAKKVVOLPD	YHYVDHQMEI 200
	210	220	230	240	250	
KKO[Frame 1]	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250
H41pkve#1[Fr	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250
mKikGR1.txt[	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250
mkikgr69.txt	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250
mkikgr10.1[F	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250
mkikgr12.0 D	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250
mkik132.txt[	201	TSHDKDYNKV	KLYEHAKAYS	GLPRLAK*		250

kikgr1.gpt	1	MSVITSEMKIELRMEGAVNGHKFVITGKSGQPFECHQNVDLTVIEGGPLPFAFDILTTAFHYGNRVFVE	70
kikgr1.gpt	1	MSVITSEMKIELRMEGAVNGHKFVITGKSGQPFECHQNVDLTVIEGGPLPFAFDILTTAFHYGNRVFVE	70
kikgr69.gpt	1	MSVITSEMKIELRMEGAVNGHKFVITGKSGQPFECHQNVDLTVIEGGPLPFAFDILTTAFHYGNRVFVE	70
kikgr101.gpt	1	MSVITSEMKIELRMEGAVNGHKFVITGKSGQPFECHQNVDLTVIEGGPLPFAFDILTTAFHYGNRVFVE	70
kikgr110.gpt	1	MSVITSEMKIELRMEGAVNGHKFVITGKSGQPFECHQNVDLTVIEGGPLPFAFDILTTAFHYGNRVFVE	70
mkikgr132.gpt	1	MSVITSEMKIELRMEGAVNGHKFVITGKSGQPFECHQNVDLTVIEGGPLPFAFDILTTAFHYGNRVFVE	70
kikgr.gpt	71	YPEEIVDYFKQSPPEGYSWERSMSYEDGGICLATNNITMKKDGSCNFVNEIRFDGPNFPANGFVPMQKRTV	140
kikgr1.gpt	71	YPEEIVDYFKQSPPEGYSWERSMSYEDGGICLATNNITMKKDGSCNFVNEIRFDGPNFPANGFVPMQKRTV	140
kikgr69.gpt	71	YPEEIVDYFKQSPPEGYSWERSMSYEDGGICLATNNITMKKDGSCNFVNEIRFDGPNFPANGFVPMQKRTV	140
kikgr101.gpt	71	YPEEIVDYFKQSPPEGYSWERSMSYEDGGICLATNNITMKKDGSCNFVNEIRFDGPNFPANGFVPMQKRTV	140
kikgr110.gpt	71	YPEEIVDYFKQSPPEGYSWERSMSYEDGGICLATNNITMKKDGSCNFVNEIRFDGPNFPANGFVPMQKRTV	140
mkikgr132.gpt	71	YPEEIVDYFKQSPPEGYSWERSMSYEDGGICLATNNITMKKDGSCNFVNEIRFDGPNFPANGFVPMQKRTV	140
kikgr.gpt	141	KWEPSTERMYVVRDGVLGKDVEMALLLOGGHHYRCDFRTTYKAKKVQLPDYHVDHQMIEITSHDKDYNKV	210
kikgr1.gpt	141	KWEPSTERMYVVRDGVLGKDVEMALLLOGGHHYRCDFRTTYKAKKVQLPDYHVDHQMIEITSHDKDYNKV	210
kikgr69.gpt	141	KWEPSTERMYVVRDGVLGKDVEMALLLOGGHHYRCDFRTTYKAKKVQLPDYHVDHQMIEITSHDKDYNKV	210
kikgr101.gpt	141	KWEPSTERMYVVRDGVLGKDVEMALLLOGGHHYRCDFRTTYKAKKVQLPDYHVDHQMIEITSHDKDYNKV	210
kikgr110.gpt	141	KWEPSTERMYVVRDGVLGKDVEMALLLOGGHHYRCDFRTTYKAKKVQLPDYHVDHQMIEITSHDKDYNKV	210
mkikgr132.gpt	141	KWEPSTERMYVVRDGVLGKDVEMALLLOGGHHYRCDFRTTYKAKKVQLPDYHVDHQMIEITSHDKDYNKV	210
kikgr.gpt	211	KLYEHAKAYSGPLPRAK-----	227
kikgr1.gpt	211	KLYEHAKAYSGPLPRAK-----	227
kikgr69.gpt	211	KLYEHAKAYSGPLPRAK-----	221
kikgr101.gpt	211	KLYEHAKAYSGPLPRAK-----	232
kikgr110.gpt	211	KLYEHAKAYSGPLPRAK-----	232
mkikgr132.gpt	211	KLYEHAKAYSGPLPRAK-----	232

clone name	photosensitivity	Green ex	Green em	Red ex1	Red ex2	Red em
kilgr	photoconvert to red on irradiation of UV light (380nm)	507	517	360	583	593
kilgr6.9	photoconvert to red on irradiation of UV light (360nm)	505	516	360	583	593
kilgr10.1	photoconvert to red on irradiation of UV light (360nm)	505	515	359	582	593
kilgr11.0	photoconvert to red on irradiation of UV light (360nm)	505	515	360	582	593
kilgr132	photoconvert to red on irradiation of UV light (361nm)	505	515	359	580	591

ATTACHMENT C